UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/97
29 March 1996

Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 19 of the provisional agenda

DRAFTING OF A DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the working group on its eleventh session

Chairman-Rapporteur: Mr. Jan Helgesen (Norway)

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	3
I. ORGANIZATION OF THE SESSION	3 - 13	3
A. Opening and duration of the session	3	3
B. Election of the Chairman-Rapporteur	4	3
C. Participation	5 - 9	3
D. Documentation	10	4
E. Organization of work	11 - 13	4
II. CONSIDERATION OF THE DRAFT DECLARATION	14 - 89	4
A. Chapter III	15 - 43	4
B. Chapter IV	44 - 89	8

CONTENTS (continued)

		Paragraphs	Page
III.	OTHER ISSUES	90 - 102	14

Annexes

I. First reading text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms as amended in the course of the second reading at the ninth and tenth sessions of the Working Group 17

II. Compilation of second reading proposals presented during the eleventh session of the Working Group 25

Introduction

1. The Commission on Human Rights, by decision 1985/112 of 14 March 1985, established an open-ended working group to draft a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. This decision was approved by the Economic and Social Council in its decision 1985/152 of 30 May 1985. The Working Group held its first to tenth sessions prior to the forty-second to fifty-first sessions, respectively, of the Commission on Human Rights, its reports to the Commission being contained in documents E/CN.4/1986/40, E/CN.4/1987/38, E/CN.4/1988/26, E/CN.4/1989/45, E/CN.4/1990/47, E/CN.4/1991/57, E/CN.4/1992/53 and Corr.1, E/CN.4/1993/64, E/CN.4/1994/81 and Corr.1 and E/CN.4/1995/93.

2. The Commission, in its resolution 1995/84 of 8 March 1995, decided to continue at its fifty-second session its work on the elaboration of the draft declaration. The Economic and Social Council, in its resolution 1995/38 of 25 July 1995, authorized the open-ended working group to meet for a period of one week prior to the fifty-second session of the Commission on Human Rights in order to continue the work on the draft declaration.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The eleventh session of the Working Group was opened by the Assistant Secretary-General for Human Rights, who made a statement. During the session the Working Group held 11 meetings from 4 to 8 and on 28 March 1996.

B. Election of the Chairman-Rapporteur

4. At its 1st meeting, on 4 March 1996, the Working Group elected Mr. Jan Helgesen (Norway) Chairman-Rapporteur.

C. Participation

5. The representatives of the following States members of the Commission attended the meetings of the Working Group, which were open to all members of the Commission: Algeria, Australia, Austria, Bangladesh, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Denmark, Egypt, El Salvador, Ethiopia, France, Germany, India, Italy, Japan, Mexico, Netherlands, Pakistan, Peru, Philippines, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

6. The following States, non-members of the Commission, were represented by observers: Argentina, Finland, Greece, Iran (Islamic Republic of), Jordan, New Zealand, Nigeria, Norway, Poland, Romania, San Marino, Spain, Senegal, South Africa, Sweden, Syrian Arab Republic, Tunisia, Turkey.

7. The following non-member State of the United Nations was also represented by an observer: Switzerland.

8. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings: Amnesty International, Baha'i International Community, International Commission of Jurists, International Federation of Human Rights, International Service for Human Rights, Lawyers Committee for Human Rights.

9. The Association for the Prevention of Torture and the Carter Center, also non-governmental organizations, were represented by observers.

D. Documentation

10. The Working Group had before it the following documents:

E/CN.4/1996/WG.6/1	Provisional agenda
E/CN.4/1995/93	Report of the Working Group on its tenth session

E. Organization of work

11. The Working Group adopted its agenda, as contained in document E/CN.4/1996/WG.6/1, at its 1st meeting, on 4 March 1996.

12. The Working Group subsequently decided to continue the second reading of the draft declaration by considering first its operative part. The Chairman-Rapporteur proposed to begin the work with the consideration of those articles which seemed to be less controversial and therefore more conducive to consensus.

13. The Working Group subsequently decided to convene an informal drafting group in order to speed up the drafting process. The informal drafting group, headed by the Chairman, met in the afternoon of 4 March and in the morning of 5 March; an informal meeting headed by the representative of India was also held in the afternoon of 8 March 1996.

II. CONSIDERATION OF THE DRAFT DECLARATION

14. In the course of its eleventh session, the Working Group considered articles 1 and 3 of chapter III and article 2 of chapter IV, as contained in annex I to the report on its tenth session (E/CN.4/1995/93). The Working Group was unable to adopt at second reading any of the articles which it had considered.

A. Chapter III

Article 1

15. The Working Group considered article 1 of chapter III at its 7th and 8th meetings, on 7 March 1996.

16. At the 7th meeting, the Working Group discussed the expression "universally recognized". The Chairman-Rapporteur noted that while there was

a general willingness to delete these words from article 1 of chapter III, it was also felt that in some other places of the draft declaration they might be retained.

17. The proposal of the Chairman-Rapporteur to delete these words in square brackets from article 1 was supported by the representatives of the Netherlands and Cuba and by the observer for Sweden.

18. The representative of Mexico favoured the retaining of the words "universally recognized" and pointed out that these words were a part of the title of the draft declaration as well as of the mandate of the Working Group.

19. The observer for the Syrian Arab Republic was also in favour of retaining the words "universally recognized" and proposed to delete the square brackets.

20. The Chairman-Rapporteur was of the view that the Working Group should not be too concerned about the consistency of the wording of article 1 with the title of the draft declaration, which also reflected the mandate of the Working Group. He felt that the Commission on Human Rights might agree to modify the mandate which it had established more then 10 years ago in a different situation.

21. At the 8th meeting, the representative of Mexico agreed to the deletion of the words "universally recognized" from article 1 of chapter III on the understanding that the preambular part should remain unchanged.

22. With regard to the expression "individually and in association with others", the Chairman-Rapporteur indicated his intention to stick to the formula "in association", as agreed in the course of the tenth session of the Working Group (E/CN.4/1995/93, para. 96). He noted, however, that some delegations still have problems with this expression, because the translation into French and Spanish of the words "in association" did not reflect properly the meaning of that expression in the English language.

23. The observer for the Islamic Republic of Iran stated that his delegation had certain problems with the words "to meet and assemble peacefully" in paragraph (a) of article 1 and indicated his intention to propose an alternative wording.

24. At the 10th meeting, on 8 March 1996, the observer for the Syrian Arab Republic stated that the words "universally recognized" should remain in the title of the draft declaration. However, for the sake of facilitating the work of the Working Group and reaching a consensus, his delegation accepted the possibility of deleting these words in some other parts of the draft declaration.

25. At the 9th meeting, on 8 March 1996, the Chairman-Rapporteur informed the Working Group that all attempts to establish consensus on article 1 of chapter III through informal consultations had not been successful.

Article 3

26. The Working Group considered article 3 of chapter III at its 6th meeting, on 6 March 1996.

27. The representative of Australia stated that it would not be possible for his delegation to accept the text of this article if the word "their", contained in square brackets in both paragraphs of article 3, was not deleted. He considered that the inclusion of this word would limit the scope of the article in a way that it would render the Declaration without value.

28. The position of Australia and its proposal to delete the word "their" was supported by the representatives of the Netherlands, Germany, Denmark, the United States of America, the United Kingdom, Colombia, France, India, Chile and Mexico and by the observers for Finland, Greece, Sweden, the International Commission of Jurists, the International Federation of Human Rights and Amnesty International.

29. The representatives of China and Cuba and the observers for the Syrian Arab Republic, Nigeria and the Islamic Republic of Iran were in favour of the inclusion of the word "their" or of the retention of "[their]".

30. The representatives of Germany and the United Kingdom suggested the following alternative wording for the second paragraph of article 3:

> "In this connection, persons and groups should enjoy the protection of the national law in reacting against or opposing, through peaceful means, activities and acts attributable to States which result in violations of human rights and fundamental freedoms as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights."

31. The representative of the Russian Federation was of the opinion that the establishment of any special legal regime for human rights defenders should be avoided and that the guiding principles in this area should be the freedom of association, freedom of expression and equality before the law. From this point of view, the existing text of article 3 was far from satisfactory.

32. The observer for Nigeria felt that the expression "peaceful activities" was too ambiguous and needed clarification. He also suggested to replace the words "against violations of [their] human rights and fundamental freedoms" by the words "to protest or defend the human rights and fundamental freedoms of persons whose rights have been violated".

33. The representative of Cuba referred to some of the proposals made with regard to article 3 during the tenth session of the Working Group, as contained in paragraphs 246, 256 and 258 of its report (E/CN.4/1995/93), and suggested that these proposals might be used for drafting purposes.

34. The observer for Romania proposed to modify the second part of the first paragraph to read: "against violations or acts and activities which might violate human rights and fundamental freedoms". In the second paragraph, he proposed to drop the words "carried out by the State, groups or persons".

35. The observer for Greece supported the proposal made by the delegations of Germany and the United Kingdom and submitted two amendments thereto. The first sought to replace the words "activities and acts attributable to States which result in violations of" by "activities and acts of States violating". The second amendment was to replace the words "that affect the enjoyment of" by "aimed at the destruction of".

36. The observer for Sweden proposed an alternative wording for article 3 by adding, at the end of the first paragraph, the following text:

> "as well as in peaceful activities in reacting against acts of violence and terror. In this connection, persons and groups participating in such peaceful activities are entitled to be protected under national law".

37. The observer for the International Commission of Jurists felt that the words "In this connection" in the proposal by Sweden were not needed.

38. Also with regard to the proposal made by Sweden, the observer for the Syrian Arab Republic argued that the concept of "terror" was extraneous to the mandate of the Working Group. This view was shared by the representative of Mexico.

39. The observer for Greece felt that the meaning of the words "acts of violence and terror" in the proposal of Sweden was too broad, and expressed the preference of her delegation for the proposal of Germany and the United Kingdom.

40. The observer for Sweden indicated the readiness of her delegation to revise her proposal by deleting the words "and terror".

41. The Chairman-Rapporteur appealed to delegations not to reopen the substantive discussion on this article. He stated that the principal task of the Working Group at that stage was not to produce a legally perfect declaration but rather a text which could be adopted by consensus.

42. The representative of the Netherlands felt that there had been a political controversy between some delegations, and that political problems which were behind the legal text would not easily go away.

43. At the 9th meeting, on 8 March 1996, the Chairman-Rapporteur informed the Working Group that the informal consultations on article 3 of chapter III had not been successful and no consensus could therefore be established at that stage.

B. Chapter IV

Article 2

44. The Working Group began consideration of article 2 of chapter IV, as contained in annex I to the report on its tenth session (E/CN.4/1995/93), at the 1st meeting, on 4 March 1996.

45. Having referred to the comments made by her delegation the previous year (E/CN.4/1995/93, para. 266), the representative of the United Kingdom reintroduced and orally revised the proposals presented during the tenth session of the Working Group (para. 275) which read as follows:

> "To this end, everyone whose rights and freedoms are violated, has the right to:
>
> "(a) Complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;
>
> "(b) Obtain a decision in accordance with law providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay.
>
> "2 bis
>
> "Furthermore, everyone, individually and in association, has the right, inter alia, to:
>
> "(a) [Draw public attention to violations of human rights and to] complain about the policies and actions of individual officials and governmental bodies by petitions, reports or other legal means to competent national judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;
>
> "(b) Attend relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with national and international standards;
>
> "(c) Offer and provide professionally qualified legal assistance, in defending human rights and fundamental freedoms;
>
> "(d) Unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures, including those procedures requiring the exhaustion of all available domestic remedies."

46. The revision consisted of adding, after the words "has the right" in the chapeau of article 2, the words "in person or through authorized representation".

47. At the proposal of the Chairman-Rapporteur, the word "legally" was subsequently inserted before the words "authorized representations".

48. The representative of Mexico referred to the proposal made by his delegation during the tenth session of the Working Group (E/CN.4/1995/93, annex II, CRP.6) and reiterated that proposal which consisted of new wording for the last paragraph of article 2 reading as follows:

> "IV.2 (f) Free access, once the relevant internal remedies have been exhausted, to the mechanisms provided for by the applicable international human rights instruments which have general or special competence to receive and consider communications on matters of human rights, and unhindered communication with them, using the established procedures."

49. The observer for Amnesty International reiterated the proposal made by his delegation during the tenth session of the Working Group (E/CN.4/1995/93, para. 277). The proposal consisted of adding a new paragraph (c) to the text of article 2 as submitted by the delegation of the United Kingdom, which read as follows:

> (c) Have the remedies guaranteed in paragraphs (a) and (b) exercised by others on behalf of the victim if the victim is unable to do so effectively.

50. At the 2nd, 3rd and 4th meetings, on 4 and 5 March 1996, the Working Group continued its consideration of article 2 of chapter IV both in plenary session and in informal drafting group.

51. At the 3rd meeting, on 5 March 1996, the Working Group had before it a compromise proposal submitted by the delegations of Cuba and the Netherlands containing a new text for the chapeau and paragraph (a) of article 2. This proposal was later circulated as CRP.1 (see annex II).

52. At the 4th meeting, on 5 March 1996, the representative of Cuba proposed the following text to replace paragraph (a) of article 2 bis as submitted by the delegation of the United Kingdom:

> (a) Complain, in accordance with existing [procedures] [law], about the policies and actions of individuals, officials and governmental bodies, by means of petitions, [reports] or other legal procedures, to competent authorities provided for by the legal system of the State, which should render their decision on the complaint without undue delay.

53. At the same meeting, the representative of the Netherlands proposed the following alternative wording for the same paragraph:

> (a) Complain publicly about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms by petitions, reports or other appropriate means to all competent domestic authorities which should render their decision on the complaint without undue delay, as well as to any relevant competent international bodies.

54. Also at the same meeting, the observer for the International Commission of Jurists proposed to add a new sub-paragraph to paragraph (a) of article 2 bis reading as follows:

> These domestic authorities and international bodies should provide public and reasonably prompt and detailed replies to such complaints and render reasonably prompt and detailed public decisions on the complaints.

55. The representative of Cuba expressed the view that domestic and international aspects of the issue should be dealt with separately. This view was shared by the observer for Greece who also considered that there should be a separate paragraph on the right to complain to international bodies.

56. With regard to paragraph (b) of article 2 bis as submitted by the delegation of the United Kingdom (see para. 45 above), the representative of the Netherlands proposed the following alternative wording to be used in place of the words "to assess": "observe, monitor or, inter alia, to assess".

57. The representative of Cuba proposed the following text to replace paragraph (b) of article 2 bis as submitted by the delegation of the United Kingdom:

(b) To attend, in person or through legally [authorized] [accredited] representatives the hearings or proceedings in the complaints related to violations or arbitrary limitations of his/her rights or freedoms recognized by the applicable domestic law and the international obligations of States.

58. With regard to the same paragraph, the representative of Mexico proposed the following alternative wording:

(b) To attend appropriate hearings or proceedings or, as the case may be, trials to have a first hand knowledge of their fairness and compliance with national and international standards.

59. Several proposals containing new language were submitted in relation to paragraph (c) of article 2 bis.

60. The representative of Cuba presented the following text:

(c) To request and obtain the necessary professional qualified legal expertise and other kinds of expertise in the field of human rights.

61. The representative of Australia submitted the text reading as follows:

(c) To provide professionally qualified legal assistance and other expertise in defending human rights and fundamental freedoms.

62. The representative of the Netherlands proposed the following text:

(c) To offer and provide as well as request and receive expertise, including professionally qualified assistance, in defending human rights and fundamental freedoms.

63. The representative of China proposed the following wording:

(c) To offer and provide professionally qualified legal assistance or other relevant advice in defending human rights and fundamental freedoms.

64. With regard to paragraph (d) of article 2 bis as submitted by the United Kingdom, a number of delegations, including the Netherlands, Chile, Germany, Norway, Greece, the International Federation of Human Rights and Amnesty International, considered that an explicit reference to the exhaustion of domestic remedies was not necessary and that the final part of that paragraph, beginning with the word "including", could be deleted.

65. The observer for Finland referred in this connection to the comments made by his delegation the previous year (E/CN.4/1995/93, para. 272) according to which the access to international bodies should not depend on whether domestic remedies had been exhausted.

66. At the 5th meeting, on 6 March 1996, the Working Group had before it a revised proposal of the United Kingdom relating to articles 2 and 2 bis of chapter IV. This proposal was later circulated as CRP.2 (see annex II). Following a suggestion by the Chairman-Rapporteur, article 2 bis was subsequently referred to as article Y.

67. In the discussion that followed, the representatives of the Netherlands, Canada and Australia and the observer for Norway expressed their support, in general terms, for the revised proposal of the United Kingdom as contained in CRP.2. Several amendments were submitted to this text.

68. The representative of the Netherlands proposed to amend paragraph (e) of article Y in CRP.2 by replacing the word "Provide" by the words "Offer and provide, as well as request and receive". This proposal was supported by the representative of the United States of America and the observer for Norway.

69. The representative of Mexico considered it essential that article 2 should be consistent with already existing standards and the language used in other human rights instruments. He referred in particular to the Declaration on the Protection of All Persons from Enforced Disappearance of 1992 and expressed the preference of his delegation for the language used in article 13 (1) of this Declaration. This view was shared by the observer for Sweden.

70. With regard to article Y, the representative of Mexico proposed to modify the beginning of paragraph (b) to read: "In accordance with applicable international instruments and their admissibility procedures".

71. The observer for Norway proposed deleting, in paragraph (e) of article Y, the words "if professionally qualified".

72. The observer for the Islamic Republic of Iran proposed an alternative language for paragraphs (a), (b), (c) and (d) of article Y. These proposals were later circulated as CRP.4 (see annex II).

73. The representative of Cuba proposed the following amendments to article 2 in CRP.2:

(a) To replace the word "obtain" by the word "seek";

(b) To add, after the word "compensation", the words "as the case may be"; and

(c) To delete the remaining part of the article.

74. With regard to the chapeau of article Y in CRP.2, the representative of Cuba proposed the following new wording:

> "Furthermore, everyone, individually and in association, has the right, in accordance with applicable national law and the international obligations and standards accepted by the States, to:".

Consequently, the representative of Cuba considered that references to "existing law" and "applicable international instruments" in paragraphs (a) and (b) of article Y were no longer needed.

75. The amendments proposed by Cuba, especially the proposal to replace the word "obtain" by "seek", were opposed by the representatives of the Netherlands, the United States of America, Canada and Australia, while they were supported by the representatives of Mexico and China and the observer for Nigeria.

76. The Chairman-Rapporteur appealed to delegations not to insist on including references to national legislation throughout the text of the draft declaration. In this connection, he referred to paragraph 340 of the 1994 report of the Working Group in which it was confirmed that the limitations provisions contained in chapter V necessarily applied to other chapters and articles. The delegations of the Netherlands, Canada, Australia, Sweden and the International Federation of Human Rights supported this statement of the Chairman-Rapporteur.

77. The representative of Cuba argued that since in many articles new provisions were included which seemed to go far beyond what had been provided for in national legislation, there was always a need to refer to the predominance of national law.

78. The representative of Mexico noted that no decision had been taken by the Working Group concerning the placing of article 2 of chapter V in the draft declaration.

79. The representative of China considered that the issue of rights and responsibilities could be repeated in relevant articles. With regard to paragraph (a) of article Y in CRP.2, he proposed to delete the words "and to make public the complaint and its contents".

80. The representative of Australia proposed to replace, in article 2 of CRP.2, the words "including compensation" by the words "including any compensation due".

81. Also in connection with this issue, the representative of Mexico proposed the wording: "which might include redress and compensation, as the case may be", while the representative of France preferred the words "including, if necessary, a compensation", and the observer for Nigeria, the words "including compensation, as applicable".

82. The observer for Nigeria also suggested to add, before the word "representation" in article 2, the words "authorized or consented".

83. With regard to the issue of placing of article 2 of chapter V, the Chairman-Rapporteur felt that, in order to accommodate various interests and to avoid unnecessary repetitions, this article might be moved somewhere to the beginning of the draft declaration.

84. At the 6th meeting, on 6 March 1996, the Working Group had before it the revised proposals of Cuba amending the proposals of the United Kingdom as contained in CRP.2. The proposals of Cuba were circulated as CRP.3 (see annex II).

85. At the 7th meeting, on 7 March 1996, the Chairman-Rapporteur introduced his proposals on article 2 of chapter IV contained in CRP.5 (see annex II) and invited the Working Group to adopt this text as a possible compromise.

86. The representatives of the Netherlands and China and the observers for Finland, the Islamic Republic of Iran and Amnesty International praised the efforts of the Chairman-Rapporteur and found the proposed text acceptable. The observers for Amnesty International and Finland expressed, however, doubts with regard to the term "regulations" which they considered to be not necessarily based on law.

87. In the opinion of the representative of Cuba, the text proposed by the Chairman did not reflect properly the various provisions which might exist in national law with regard to public hearing or the proceedings to be held in camera. The representative of Cuba also proposed the following amendments to CRP.5:

(a) To add the word "and" before the words "in accordance with applicable laws and regulations";

(b) To delete the comma after the words "including any compensation due".

88. At the 9th meeting, on 8 March 1996, the representative of the Netherlands referred to the compromise proposal on article 2 of chapter IV which he tried to elaborate in cooperation with the delegation of Chile. This proposal was later circulated as CRP.6 (see annex II).

89. Following the informal consultations, the Chairman-Rapporteur informed the Working Group that no progress had been achieved in the attempts to reach consensus either on CRP.5 or on CRP.6.

III. OTHER ISSUES

90. At the 9th meeting, on 8 March 1996, the observer for Sweden noted that the eleventh session of the Working Group had been a failure despite the efforts of the Chairman-Rapporteur and many other participants. She felt that appropriate action should be taken in the period between the sessions in order to facilitate the work of the Working Group next year.

91. The observer for Sweden further proposed a text to be considered by the Working Group and included in its report to the Commission on Human Rights. The text read as follows:

> "The Working Group recommends that the fifty-second session of Commission on Human Rights:
>
> "(a) Approve the holding of a further session of the Working Group, at which every effort should be made to produce a final text for submission to the Commission on Human Rights at its fifty-third session;
>
> "(b) Request the present Chairman of the Working Group, with a view to facilitating the work of the Working Group at its next session, to continue his work as Chairman between sessions in order to refine the text based on the articles which have already been adopted, to reorder the sequence of the articles and to consolidate the text in order to avoid repetition;
>
> "(c) In addition, encourage the present Chairman, during his work between sessions, to consult with interested participants on the refining of the text and to consider comments from all interested parties."

92. This proposal was considered in an informal session of the Working Group held on 8 March 1996, chaired by the representative of India. The Chairman-Rapporteur had decided not to attend the informal meeting.

93. At the 10th meeting, on 8 March 1996, the Working Group adopted and decided to include in its report the text elaborated during the informal session. This text, which is recommended to the Commission on Human Rights for adoption, reads as follows:

> "Encourages the present Chairman-Rapporteur of the Working Group, Mr. Jan Helgesen, to continue his efforts to prepare a consolidated and refined text in the form of a working paper, in the light of past deliberations, for consideration at a future session of the Working Group, and to this end to communicate with States, intergovernmental and non-governmental organizations, and furthermore requests the Secretariat to circulate Chairman's paper to all States and other interested parties."

94. In connection with the future work of the Working Group, the representative of Cuba said he could endorse the text contained in the preceding paragraph, on the understanding that:

(a) The Chairman would make those efforts with the aim of creatively seeking a compromise wording concerning the content of the various articles analysed by the Group in 1996;

(b) The Chairman would complete that task before the beginning of the fifty-third session of the Commission on Human Rights; and

(c) The Group would meet again to hold its twelfth session in 1997, in order to report to the Commission at its fifty-third session.

95. The representative of the Syrian Arab Republic noted that the efforts of the Chairman-Rapporteur to prepare a consolidated and refined text should aim solely at improving the language of the existing text without making any fundamental changes which could alter or affect the existing balance of the text or which might lead to the alteration of essential elements which had been agreed on.

96. Referring to the results of the eleventh session of the Working Group, the observer for the International Commission of Jurists regretted that the participants failed to find ways to strengthen protection for human rights defenders through the text of the draft declaration. He considered that a small number of Governments devoted a disproportionate amount of energy towards finding new ways to strengthen protection for States. The proposals of those Governments, if accepted, would have undermined compromise draft articles agreed to over the course of 10 years. Despite the hampering of progress this year, the International Commission of Jurists expressed its willingness to continue the drafting process since the goals of this work merit continued resolve. A reference was made to the 1992 Declaration on the Protection of All Persons from Enforced Disappearance which, in the view of the International Commission of Jurists, could be very instructive and serve as a guide for the Working Group in approaching its own future drafting role.

97. The comments made by the observer for the International Commission of Jurists were shared by the observer for Amnesty International who also found the eleventh session of the Working Group to be a highly frustrating meeting. He, however, retained a certain optimism for the future session.

98. The Association for the Prevention of Torture, the Carter Center and the International Federation of Human Rights also expressed their determination to spare no efforts in order to obtain a good and strong draft declaration under the able chairmanship of the Chairman-Rapporteur.

99. The observer for the Carter Center particularly stressed the importance of affirming in the draft declaration the right of defenders to advocate on behalf of those who cannot effectively pursue a claim for themselves or are unable to designate representatives, such as the disappeared. Another essential principle to be safeguarded in the declaration should be the right to solicit broadly and to receive human and material resources needed for the support of the work of human rights defenders. It was stressed that the main

question before the Working Group was whether it accepts the role with which it had been entrusted, i.e. to serve as a vehicle for refining and making tangible the vision enunciated by the founders of the United Nations: that human rights abuses diminish each individual.

100. It was emphasized by the observer for the International Federation of Human Rights that certain delegations had tried to prevent the Working Group from making any progress; however, no power could make itself stronger by suppressing criticism. The observer considered that the mandate of the Working Group had to be renewed by the Commission on Human Rights.

101. The representative of Cuba pointed out that mutual accusations would not permit the Working Group to complete its task.

102. The Chairman-Rapporteur shared the view that the concerns of human rights defenders should be at the centre of the efforts of the Working Group. He considered, however, that diverging or conflicting views should not be equated with a fight between delegations.

Annex I

FIRST READING TEXT OF THE

DRAFT DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

AS AMENDED IN THE COURSE OF THE SECOND READING AT THE NINTH AND TENTH SESSIONS OF THE WORKING GROUP

Preamble

The General Assembly,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and stressing the paramount importance of achieving international cooperation to fulfil this obligation, according to the United Nations Charter,

Recalling the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of [universally recognized] human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system,

Reaffirming further the importance of regional human rights instruments in the international efforts to promote universal respect for and observance of human rights and fundamental freedoms,

Acknowledging the important role of international cooperation for and the valuable work of individuals, groups and associations in contributing to the effective elimination of all mass, flagrant or systematic violations of the human rights and fundamental freedoms of peoples and individuals, such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are indivisible and interdependent, without prejudice to the implementation of each of these rights and freedoms,

Stressing that each State has the prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for, and foster knowledge of, human rights and fundamental freedoms at the national and international level.

Declares:

Chapter I

Article 1

Everyone has the right, individually and in association, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this declaration are effectively guaranteed. 1/

Article 2

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political as well as other fields and the legal guarantees required to ensure that all persons, individually and in association, are able to enjoy all these rights and freedoms in practice. 2/

Article 3

No one shall participate, by act or failure to act where required, in violating human rights and fundamental freedoms, and no one shall be subject to punishment or adverse action of any kind for refusing to do so. 3/

Chapter II

Article 1

Everyone has the right to know, to be informed about and to make known to others human rights and fundamental freedoms to which they are entitled. 4/

Article 2

Everyone has the right, individually as well as together with others,

(a) To seek, obtain, receive and hold information about these rights and freedoms, including having full access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) To publish, impart or disseminate freely to others views, information and knowledge of [universally recognized] human rights and fundamental freedoms.

Article 3

Everyone has the right, individually and in association with others, to study, discuss and form opinions as to whether these rights and freedoms are observed, both in law and in practice, [in their own country and elsewhere, and to solicit public attention on these matters].

Article 4

Everyone has the right to develop and discuss new human rights ideas and principles, and to advocate their universal acceptance. 5/

Article 5

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights. 5/

2. Such measures shall include:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments; 5/

(b) Full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the official report of these bodies. 5/

3. The State has the responsibility to take steps to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education, and to encourage all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials to include appropriate elements of human rights teaching in their training programmes. 5/

Chapter III

Article 1

For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations, or, where relevant, groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 2

Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the Government of his country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms. 6/

Article 3

Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of [their] human rights and fundamental freedoms.

In this connection, persons and groups are entitled to be protected under national law in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons aimed at the destruction of [their] human rights and fundamental freedoms.

Article 4

1. Everyone has the right [is entitled], individually and in association with others, to solicit, receive and utilize voluntary financial or other contributions, for the purpose of promoting and protecting, through peaceful means, [universally recognized] human rights and fundamental freedoms.

2. In this connection, all contributions, including those from foreign sources, and the use thereof, shall be subject, on a non-discriminatory basis, to the national legislation as referred to in chapter V.

Chapter IV

Article 1

In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in this declaration, everyone has the right to benefit from an effective remedy and to be protected in the event of violations of these rights. 7/

Article 2

To this end, everyone has the right, inter alia, to:

(a) Draw public attention to violations of human rights and to complain about the policies and actions of individual officials and governmental bodies by petitions or other means to competent national judicial, administrative, or legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;

(b) Complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;

(c) Obtain a just decision and award providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay;

(d) Attend such relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with national and international standards;

(e) Offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms;

(f) Unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures.

Article 3

To the same end, each State shall, inter alia:

(a) Take all necessary steps to ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration; 8/

(b) Encourage and support, where appropriate, the creation and development of further institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institutions; 9/

(c) Conduct or ensure that a prompt and impartial investigation or inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction. 10/

Article 4

Everyone, whether individually or in groups, has the right to the lawful exercise of his occupation or profession. Everyone who, as a result of his occupation or profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national or international standards of occupational and professional conduct or ethics. 11/

Chapter V

Article 1

Nothing in the present declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments in this field. 12/

Article 2

Domestic law consistent with the United Nations Charter and other international obligations and commitments applicable to the State in the field of human rights and fundamental freedoms, is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities referred to in this declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted. 13/

Article 3

In the exercise of the rights and freedoms referred to in this declaration, everyone, acting individually or in association with others, shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society and in accordance with applicable international obligations and commitments. 14/

Article 4

Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration or at their limitations to a greater extent than is provided for in this declaration. 15/

Article 5

1. Everyone has duties towards and within the community in which alone the free and full development of his personality is possible.

2. Everyone, individually and in association with others, should have respect for the rights, freedoms, identity and human dignity of all others, and have respect for the culture of the whole community and the cultures within the community, consistent with human rights and fundamental freedoms.

3. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding and promoting democratic processes, a democratic society, democracy and human rights and fundamental freedoms. This does not imply the right to carry out programmes or to engage in any other activity aimed at the destruction of democratic processes and human rights and fundamental freedoms, including progress accomplished in these areas.

* * *

Text "X"

Individuals, non-governmental organizations and institutions have an important role in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to further strengthen, inter alia, understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups. 16/

Notes

1/ Adopted on 18 January 1995.

2/ Adopted on 19 January 1995.

3/ Adopted on 19 January 1994.

4/ Adopted on 19 January 1994.

5/ Adopted on 20 January 1994.

6/ Adopted on 21 January 1994.

7/ Adopted on 24 January 1994.

8/ Both the "chapeau" and paragraph (a) adopted on 25 January 1994.

9/ Adopted on 25 January 1994.

10/ Adopted on 28 January 1994.

11/ Adopted on 28 January 1994.

12/ Adopted on 26 January 1994.

13/ Adopted on 26 January 1994.

14/ Adopted on 26 January 1994.

15/ Adopted on 27 January 1994.

16/ Adopted on 25 January 1995.

Annex II

COMPILATION OF SECOND READING PROPOSALS PRESENTED DURING THE ELEVENTH SESSION OF THE WORKING GROUP

CRP.1 - Delegations of Cuba and the Netherlands

Chapter IV

Article 2

To this end, everyone claiming that his/her rights or freedoms have been violated [or arbitrarily restricted] has the right, either in person or through legally [authorized] [recognized] representatives, to:

(a) Complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to seek a decision, in accordance with law, by such an authority providing redress, including any compensation due, as well as enforcement of the eventual decision and award, all without undue delay.

CRP.2 - Delegation of the United Kingdom

Chapter IV

Article 2

To this end, everyone whose rights or freedoms are allegedly violated [or arbitrarily restricted] has the right, either in person or through representation, in accordance with applicable law, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain a decision, in accordance with law, from such an authority, providing redress, including compensation, where that authority decides that there has been such a violation.

Article Y (former art. 2 bis)

Furthermore, everyone, individually and in association, has the right, inter alia:

(a) To complain, in accordance with existing law, about the policies and actions of individuals, officials and governmental bodies with regard to violations of human rights or fundamental freedoms by petitions, reports or other appropriate means [procedures] to competent domestic authorities and to make public the complaint and its contents;

(b) In accordance with applicable international instruments and procedures, to unhindered access to and communication with international bodies with general or special competence to receive and consider complaints about human rights violations or other communications on matters of human rights;

(c) To obtain public replies and decisions from such domestic authorities and international bodies without undue delay on such complaints and communications;

(d) To attend, in person or through authorized representation, relevant hearings or proceedings or, as the case may be, trials concerning violations of human rights or fundamental freedoms to obtain a first-hand knowledge of the fairness of these procedures and their compliance with national and international standards;

(e) To provide legal assistance, if professionally qualified, or other relevant expertise and advice in defending human rights and fundamental freedoms.

CRP.3 - Delegation of Cuba

Chapter IV

Article 2

To this end, everyone whose rights or freedoms are allegedly violated [or arbitrarily restricted] has the right, either in person or through representation, and in accordance with existing laws and regulations, to complain to and have that complaint promptly reviewed in a proper hearing before an independent, impartial and competent judicial authority established by law and to obtain from such an authority, in accordance with law, a valid decision which may include provision for redress including compensation, if any.

Article Y (former art. 2 bis)

Furthermore, everyone, individually and in association, has the right, in accordance with applicable domestic law and the international obligations and standards accepted by the State:

(a) To complain, by means of petitions or other appropriate non-judiciary procedures, to competent domestic authorities about the policies and actions of individual officials and governmental bodies which may have resulted in violations or arbitrary restrictions to human rights or fundamental freedoms;

(b) To have access to and communicate with international bodies with general or special competence recognized by the State to receive, consider and decide complaints about violations or arbitrary limitation of human rights and fundamental freedoms, or other communication on human rights matters;

(c) To obtain decisions and replies from such domestic authorities and international bodies on such complaints and communications without undue delays and in accordance with their respective procedures;

(d) To attend, in person or through legal representatives, the [pertinent] [relevant] proceedings in the complaints relating to violations or arbitrary limitations of his/her rights or freedoms;

(e) To request and obtain professionally qualified legal assistance and other expertise in defence of his/her human rights or fundamental freedoms.

CRP.4 - Delegation of the Islamic Republic of Iran

Chapter IV

Article Y (former art. 2 bis)

(a) To claim (complain), in accordance with existing laws (procedures and regulations), about the violation of human rights and fundamental freedoms by individual officials and governmental bodies by petitions (reports) or other legal system of the State which would (should) render its decision on the complaint and the possible counter-claims by the accused without undue delay;

(b) To attend public (relevant) hearings or proceedings or, as the case may be, trials in order to review (assess) their fairness and compare their compliance with national and international standards on an entirely personal basis;

(c) To offer and receive professionally qualified legal assistance, in accordance with the law, in defending human rights and fundamental freedoms;

(d) To unhindered access to and communication with relevant bodies or organs of the United Nations that receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures (including those procedures requiring the exhaustion of all available domestic remedies).

CRP.5 - Chairman-Rapporteur

Chapter IV

Article 2

To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through representation, in accordance with applicable laws and regulations, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms.

CRP.6 - Delegations of Chile and the Netherlands

Chapter IV

Article 2

(a) Everyone whose rights and freedoms are allegedly violated has the right, either in person or through representation, to complain to a competent authority and to have that complaint promptly, thoroughly and impartially reviewed by that authority in a public hearing and to obtain from such an authority a decision providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms;

(b) These rights shall be exercised in accordance with the law applicable in the State concerned and with article 2 of chapter V of the present Declaration. To this end, each State shall adopt legislation to ensure that these rights are effectively guaranteed.